

The complaint

Mr W complains that The Prudential Assurance Company Limited (Prudential) provided him with inaccurate information around the options available to him when he was thinking of drawing the benefits from his pension. He's unhappy that he's had to pay advice costs to use another provider for the drawdown option he originally wanted. He's also complained that he was told the relevant call recordings weren't available to be listened to as evidence, yet those recordings have now been located.

What happened

Mr W held a personal pension with Prudential. The plan was due to mature in June 2019, so Mr W began discussions with Prudential – initially through one of its financial advisers, about his retirement options. Mr W had a number of (telephone) meetings with Prudential and Pension Wise and thought that taking his tax-free cash and a drawdown option would be in his best interests. When Prudential appeared to confirm that option was available to him in a call with another adviser Mr W thought that was the right course of action for him.

He contacted Prudential the next day to begin the process but was told that his existing plan didn't allow partial withdrawals. He was told that he either had to take the benefits in the form of an annuity or transfer the entire fund to a new product – which would incur advice costs. So Mr W complained. He said he thought he'd been misled by the adviser who'd suggested that he could use his existing plan to draw tax free cash if needed and then to enter into drawdown. He said he didn't think it was fair to have to pay advice fees to transfer to a different product with Prudential, which did facilitate drawdown.

Prudential didn't uphold Mr W's complaint. It said his plan didn't allow partial withdrawals to be made and that an annuity was the only option available at retirement. It said it had made a commercial decision to require plans, such as Mr W's, to be transferred to drawdown products in order to allow partial withdrawals and it insisted that customers took financial advice (at their own expense) to be able to conduct a transfer. Prudential didn't think that the adviser had told Mr W that his plan facilitated partial withdrawals. But it said the calls had been made from the adviser's mobile phone and therefore weren't recorded.

Prudential further explained that as Mr W had already discussed its advice proposition in the first telephone call – and he had suggested he didn't want to pay for advice, the other telephone conversations were generic in nature and didn't form the basis of any firm advice.

But Mr W wasn't happy with that outcome and brought his complaint to us where one of our investigators looked into the matter. He said he thought the adviser might have given the impression that Mr W could take partial withdrawals from his plan and he believed there was a misunderstanding during the conversation. He also believed the adviser could have been clearer in explaining that he would need to check with an appropriate team first.

Because of that and the fact that Mr W was told the call recordings weren't available – which they subsequently were, the investigator thought Prudential should pay Mr W £150 for the inconvenience caused. But he was satisfied that Mr W's plan didn't contain an option for

partial withdrawals and so it wasn't possible for Mr W to use that alternative (drawdown) to take his benefits. He said Prudential didn't have to allow the partial drawdowns or cover any of Mr W's advice costs.

But Mr W didn't agree. He was particularly unhappy that Prudential had lied about not having the call recordings and asked for a copy of them. Having listened to the recordings he thought that the adviser *had* given him advice and had suggested that he could take withdrawals from his plan for a cost of 0.5%. He thought the investigator should increase the compensation to £4,870 (the cost of advice Prudential had originally quoted to him).

Prudential also didn't agree. It said that as Mr W had already received advice the conversation it had with Mr W on 13 June 2019 was a general conversation and informed Mr W of what he *might* be able to do with his plan. But it said there were no specifics and indeed it was Mr W that had introduced the idea of drawdown plans and partial withdrawals. It didn't think it should pay Mr W £150.

So as no resolution could be found the complaint's been passed to me for a review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so I agree with the investigator and for largely the same reasons. I know this outcome will disappoint both parties, so I'll explain my reasons.

Should Prudential pay Mr W's advice costs and put him into a drawdown plan?

Prudential's "*personal pension scheme –members booklet*" which was available to Mr W when he took out his plan states "*pension benefit- when you decide to draw your pension, the value of your accumulated fund will be used to purchase a pension on the Prudential's then current annuity rates for the scheme.*" A variety of options were then listed with one further option for protected rights benefits.

So it was clear that the type of pension Mr W took out only allowed him to take an income with the residual fund after drawing the tax-free cash. Taking partial withdrawals or some form of income drawdown wasn't possible under the terms of the plan. Of course, the legislation around pensions has changed many times since Mr W took out his plan but the rules that applied to his pension didn't allow him to take advantage of those changes without transferring the entire fund elsewhere.

Regardless of any information Prudential may have given Mr W to the contrary, it simply wasn't possible for him to take partial withdrawals from his existing plan in retirement, and it wouldn't be fair for me to tell Prudential that it should now allow Mr W to be able to make partial withdrawals. So I don't think Prudential needs to do anything further on that matter.

Mr W has complained about the advice fee that he would incur – either from Prudential or another adviser if he transferred the funds to a drawdown contract. But as I've said the option for drawdown wasn't available on his plan so to in order to be able to access a drawdown arrangement either through Prudential or with another provider Mr W would always have had to pay for advice.

Did Prudential provide incorrect information about Mr W's benefit options?

Mr W says Prudential did tell him that a partial withdrawal option was available from his plan and he also says that's it's not been able to provide him with the call recordings that he believes prove what he's saying is correct. Mr W has made strong representations about Prudential's inability to find the recordings.

But Prudential has now provided recordings of the two calls that took place when Mr W needed help and information prior to choosing his retirement options.

So I've listened very carefully to those calls, to see if there's any suggestion that it did promote the idea that partial withdrawals from his pension plan were an option. In the first instance the adviser did state clearly, when talking about drawdown, *"that option is available to you but it's not available from your existing contract, you would need to set up a new contract and you could absolutely do it"*. So, I think the adviser did initially set out that Mr W's contract was restrictive and wouldn't allow a drawdown facility to be taken from it directly.

But Mr W was interested in the drawdown options and particularly in the possibility of taking an uncrystallised funds pension lump sum (UFPLS). He continued to ask, *"if I wanted to do that is there a charge (say £4,870) would I need to pay £4,870 to start it"*. He was told that he wouldn't and when Mr W asked if he could stay in his current fund to do that he adviser said *"you would be staying in the current contract -the current contract could support that for you and if you do that via your current contract you're not having to pay adviser fees to set up a new contract"*.

I think at that point the conversation became confusing especially as Mr W was focused on whether he could take an UFPLS. I don't think the adviser made it clear enough at that point that he was talking about the situation that might be possible if Mr W had transferred his existing pension into a flexible access drawdown. I think he needed to confirm the need to transfer out of the existing plan and the advice costs that would entail. Although I've also taken into account that on several occasions the adviser told Mr W that as Mr W didn't require any money at that time, he didn't think it was appropriate at that point to recommend a drawdown plan.

I think the adviser was clear on that matter. And because of his earlier statement I'm not persuaded that the adviser thought Mr W could use his existing plan to enter into drawdown or that he directly said that was something Mr W could do. But I think his message did become confusing and I can understand why Mr W might have understood that he could take an UFPLS from his existing contract and not paid any advice fees. With regards to the fees I think the adviser was explaining that Mr W wouldn't have any ongoing fees if he requested the withdrawals himself from a new drawdown contract, but I think he could have been clearer on that point. So I think that Prudential could have been clearer in its explanations and I can see why Mr W thought he could use his existing contract. I think Prudential should compensate Mr W for the raised expectation its information might have caused.

Mr W says he's frustrated by Prudential misleading him over the call recordings and thinks Prudential should face punishment over its actions. And I can certainly understand why Mr W would be angry about the matter particularly as the recordings have now been located. I note that at the beginning of the calls the adviser explained that, as he was using his landline, the calls were being recorded for training purposes. So, it's not clear to me why Mr W was told there weren't any recordings when he first requested them, and I can understand why Mr W would have expected them to be available.

However, our role isn't to tell a business how it should go about things and it's not to punish a business either. In this case I'm just considering the impact Prudential's actions have had

on Mr W's situation and whether that warrants the award of a compensatory payment for any distress and inconvenience caused.

Summary

Ultimately here Mr W's plan didn't allow for any other retirement options except an annuity. Mr W favoured a drawdown option which therefore, whether with Prudential or another provider, would have incurred advice costs which he would have had to pay. But Prudential did speak to Mr W about his options and the question of an UFPLS was raised which I think led to some confusion about what options Mr W had. For that lack of clarity and for not providing Mr W with the call recordings he requested, I agree with the investigator that Prudential should compensate Mr W for the impact those matters had on him.

Putting things right

I've considered the distress caused by Prudential's failure to listen to the call recordings – that have subsequently become available, in initially answering Mr W's complaint. And the trouble and upset arising from the unclear information he was given on the telephone.

So I agree with the investigator and overall I think the sum of £150 is within the range of what I'd expect to see for matters such as these. So, I think Prudential should pay Mr W £150.

My final decision

For the reasons that I've given I uphold part of Mr W's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 September 2020.

Keith Lawrence
Ombudsman